

REMARKS

The Examiner has required election of one of the following allegedly distinct groups of claims:

Group I. Claims 1, 13, 14, 59-73 and 97, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:30-32, 62 and 103, class 435, subclass 320.1;

Group II. Claims 2-6 and 38-46, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:46, 119-127 and 131-133, class 435, subclass 320.1;

Group III. Claims 7 and 8, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:51 and 99, class 435, subclass 320.1;

Group IV. Claims 9 and 10, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:55, 57, 96, 101 and 134-135, class 435, subclass 320.1;

Group V. Claim 11, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:58, class 435, subclass 320.1;

Group VI. Claim 12, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:60, class 435, subclass 320.1;

Group VII. Claim 15, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:64 and 66, class 435, subclass 320.1;

Group VIII. Claims 16 and 17, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:68 and 70, class 435, subclass 320.1;

Group IX. Claims 18-21, 33 and 34, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:72, 74, 91, 105, and 107, class 435, subclass 320.1;

Group X. Claims 22 and 23, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:76 and 78, class 435, subclass 320.1;

Group XI. Claims 24-26, and 35, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:80, 81, 83, 93, 94, 109, 111, 113, class 435, subclass 320.1;

Group XII. Claim 27, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:85 and 113, class 435, subclass 320.1;

Group XIII. Claims 28 and 29, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:87 and 115, class 435, subclass 320.1;

Group XIV. Claims 30 and 32, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:89 and 117, class 435, subclass 320.1;

Group XV. Claims 36 and 37, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:96, class 435, subclass 320.1;

Group XVI. Claims 47-51, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:33, class 536, subclass 23.1;

Group XVII. Claims 52-56 and 74-77, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:45, class 536, subclass 23.1;

Group XVIII. Claims 57-58, drawn to an expression cassette comprising a polynucleotide sequence of SEQ ID NO:128, class 536, subclass 23.1;

Group XIX. Claims 78-90 and 92-96, drawn to a method of DNA immunization in a subject, class 424, subclass 93.2; and

Group XX. Claim 91, drawn to a method of generating an immune response in a subject using an HIV polypeptide, class 514, subclass 2;

In addition, if any of Groups I-IV and VII-XIV, a further restriction has been required to one sequence within each group.

Applicants hereby elect, **with traverse**, Group II and SEQ ID NO:120.

Applicants traverse the restriction requirement on the grounds that it would not be unduly burdensome to search sequences classified in elected Group II together.

In support of Restriction as between sequences in a single Group, the Examiner states that "there are no claims encompassing a generic HIV polypeptide, which indicates that the SEQ ID NOs are independent and there is no disclosure of relationship (percent identity) in the specification between the claimed sequences in each group." (Restriction Requirement, page 9).

In fact, within each group it is clear that each and every sequence encodes a particular HIV polypeptide. Group II, for instance, includes sequences encoding Env polypeptides. Furthermore, Applicants were not aware that the specification was required to set forth the percent sequence identity as between the claimed sequences. Given that they are clearly described as "Env-encoding," their relationship to each other is clear. As indicated in the M.P.E.P. §803.04 with regard to Restriction practice for nucleotide sequences, when nucleotide sequences encode the same protein (*e.g.*, Env as is the case with elected Group II):

[i]t has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction. In addition to the specifically selected sequences, those sequences which are patentably indistinct from the selected sequences will also be examined.

Furthermore, nucleotide sequences encoding the same protein are not considered to be independent and distinct inventions and will continue to be examined together.

Thus, all sequences encoding HIV Env proteins may be properly examined together.

Furthermore, the homology between the various sequences of Group II is very high, as illustrated by the attached alignment of SEQ ID NO:120 and 121. In view of the high degree of homology between sequences, it would not be burdensome to examine more than one sequence in each group. Certainly, SEQ ID NO:120 and 121 are so similar that it would not constitute an undue burden on the Office to examine them together.

Sequence Listing

A Notice to Comply was attached to the Restriction Requirement which requests that a new Sequence Listing be provided because the sequences listed on page 107 of the specification were allegedly missing from the computer readable form (CRF) of the sequence listing. However, Applicant notes that a Preliminary Amendment submitted to the U.S. Patent and Trademark Office on May 29, 2003 labeled the Sequences listed on page 107 as Sequence ID NOS. 136 through 143. In addition, the Sequence Listing and accompanying computer readable form accompanying the Preliminary Amendment as filed on May 29, 2003 included Sequence ID NOS. 136 through 143. Therefore, a new Sequence Listing and computer readable form are not attached hereto. If the Examiner requires another copy of the Sequence Listing, Applicant will be happy to provide one.


Applicants expressly reserve their right under 35 USC §121 to file one or more divisional applications directed to the nonelected subject matter during the pendency of this application. In addition, Applicants request rejoinder of process claims when the elected product claims are found allowable.

Please direct all further written communications regarding this application to:

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Respectfully submitted,

Date: March 7, 2005

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